

§ 231.35

49 CFR Ch. II (10–1–11 Edition)

(g) *Enforcement.* Any industry standard approved pursuant to this section will be enforced against any person, as defined at 49 CFR 209.3, who violates any provision of the approved standard or causes the violation of any such provision. Civil penalties will be assessed under this part by using the applicable defect code contained in appendix A to this part.

[76 FR 23726, Apr. 28, 2011]

§ 231.35 Procedure for modification of an approved industry safety appliance standard for new railcar construction.

(a) *Petitions for modification of an approved industry safety appliance standard.* An industry representative may seek modification of an existing industry safety appliance standard for new construction of railroad cars, locomotives, tenders, or other rail vehicles after the petition for special approval has been approved pursuant to § 231.33. The petition for modification shall include each of the elements identified in § 231.33(b).

(b) *Service.* (1) Each petition for modification of an approved industry standard under paragraph (a) of this section shall be submitted to the FRA Docket Clerk, West Building Third Floor, Office of Chief Counsel, 1200 New Jersey Avenue, SE., Washington, DC 20590.

(2) Service of each petition for modification of an existing industry safety appliance standard under paragraph (a) of this section shall be made on the following:

(i) Designated representatives of the employees responsible for the equipment's operation, inspection, testing, and maintenance under this part;

(ii) Any organizations or bodies that either issued the standard incorporated in the section(s) of the rule to which the modification pertains or issued the industry standard that is proposed in the petition for modification; and

(iii) Any other person who has filed with FRA a current statement of interest in reviewing special approvals under the particular requirement of this part at least 30 days but not more than 5 years prior to the filing of the petition. If filed, a statement of interest shall be filed with FRA's Associate Administrator for Safety and shall ref-

erence the specific section(s) of this part in which the person has an interest.

(c) *FEDERAL REGISTER document.* Upon receipt of a petition for modification, FRA will publish a document in the FEDERAL REGISTER announcing the receipt of each petition received under paragraph (a) of this section. The document will identify the public docket number in the Federal eRulemaking Portal (FeP) where the contents of each petition can be accessed and reviewed. The FeP can be accessed 24 hours a day, seven days a week, via the Internet at the docket's Web site at <http://www.regulations.gov>. All documents in the FeP are available for inspection and copying on the Web site or are available for examination at the DOT Docket Management Facility, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590, during regular business hours (9 a.m.–5 p.m.).

(d) *Comment.* Not later than 60 days from the date of publication in the FEDERAL REGISTER concerning a petition for modification under paragraph (a) of this section, any person may comment on the petition. Any such comment shall:

(1) Set forth specifically the basis upon which it is made, and contain a concise statement of the interest of the commenter in the proceeding; and

(2) Be submitted by mail or hand-delivery to the Docket Clerk, DOT Docket Management Facility, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590, or electronically via the Internet at <http://www.regulations.gov>. Any comments or information sent directly to FRA will be immediately provided to the DOT FeP for inclusion in the public docket related to the petition. All comments should identify the appropriate docket number for the petition to which they are commenting.

(e) *FRA Review.* During the 60 days provided for public comment, FRA will review the petition. If FRA objects to the requested modification, written notification will be provided within this 60-day period to the party requesting the modification detailing FRA's objection.

(f) *Disposition of petitions for modification.* (1) If no comment objecting to the requested modification is received during the 60-day comment period, provided by paragraph (d) of this section, or if FRA does not issue a written objection to the requested modification, the modification will become effective fifteen (15) days after the close of the 60-day comment period.

(2) If an objection is raised by an interested party, during the 60-day comment period, or if FRA issues a written objection to the requested modification, the requested modification will be treated as a petition for special approval of an existing industry safety appliance standard and handled in accordance with the procedures provided in §231.33(f).

(3) A petition for modification, once approved, may be re-opened upon good cause shown. Good cause exists where subsequent evidence demonstrates that an approved petition does not comply with the an applicable Federal statute,

that an approved petition does not comply with the requirements of this section; that the existing industry safety appliance standard does not provide at least an equivalent level of safety as the corresponding FRA regulation for the nearest railcar type(s); or that further information is required to make such a determination. When a petition is re-opened for good cause shown, it shall return to pending status and shall not be considered approved or denied.

(g) *Enforcement.* Any modification of an industry standard approved pursuant to this section will be enforced against any person, as defined at 49 CFR 209.3, who violates any provision of the approved standard or causes the violation of any such provision. Civil penalties will be assessed under this part by using the applicable defect code contained in appendix A to this part.

[76 FR 23726, Apr. 28, 2011]

APPENDIX A TO PART 231—SCHEDULE OF CIVIL PENALTIES¹

FRA safety appliance defect code section ²		Violation	Willful violation
110.A1	Hand Brake or Hand Brake Part Missing	\$5,000	\$7,500
110.A2	Hand Brake or Hand Brake Part Broken	5,000	7,500
110.A3	Hand Brake or Hand Brake Part Loose or Worn	2,500	5,000
110.B1	Hand Brake Inoperative	5,000	7,500
110.B2	Hand Brake Inefficient	2,500	5,000
110.B3	Hand Brake Improperly Applied	2,500	5,000
110.B4	Hand Brake Incorrectly located	2,500	5,000
110.B5	Hand Brake Shaft Welded or Wrong Dimension	2,500	5,000
110.B6	Hand Brake Shaft Not Retained in Operating Position	2,500	5,000
110.B8	Hand Brake or Hand Brake Parts Wrong Design	2,500	5,000
114.B2	Hand Brake Wheel or Lever Has Insufficient Clearance Around Rim or Handle	2,500	5,000
114.B3	Hand Brake Wheel/Lever Clearance Insufficient to Vertical Plane Through Inside Face of Knuckle	2,500	5,000
120.A1	Brake Step Missing Except by Design	5,000	7,500
120.A2	Brake Step or Brace Broken or Decayed	2,500	5,000
120.A3	Brake Step or Brace Loose	2,500	5,000
120.B1	Brake Step or Brace Bent	2,500	5,000
120.B2	Brake Step or Wrong Dimensions	2,500	5,000
120.C1	Brake Step Improperly Applied	2,500	5,000
120.C2	Brake Step Improperly Located	2,500	5,000
120.C3	Brake Step With Less Than 4" Clearance to Vertical Plane Through Inside Face of Knuckle	2,500	5,000
120.C4	Brake Step Obstructed or Otherwise Unsafe	2,500	5,000
124.A1	Running Board Missing or Part Missing Except By Design	5,000	7,500
124.A2	Running Board Broken or Decayed	5,000	7,500
124.A3	Running Board Loose Presents a Tripping Hazard or Other Unsafe Condition	2,500	5,000
124.A4	Running Board Wrong Material	2,500	5,000
124.B1	Running Board Bent to the Extent that It is Unsafe	2,500	5,000
124.B2	Running Board Wrong Dimensions	2,500	5,000
124.B3	Running Board Wrong Location	2,500	5,000
124.C1	Running Board Improperly Applied	2,500	5,000
124.C2	Running Board Obstructed	2,500	5,000
126.A1	End Platform Missing or Part Except By Design	5,000	7,500
126.A2	End Platform Broken or Decayed	5,000	7,500
126.A3	End Platform Loose	2,500	5,000
126.B1	End Platform or Brace Bent	2,500	5,000